IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Bail Appl..No. 4205 of 2007()

AGAINST THE ORDER IN CC 820/2000 IN
CC.817/2004 of J.M.F.C.,MAVELIKKARA

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: PETITIONER:

SYAMKUMAR, AGED 36 YEARS,
S/O. SURENDRAN, KUKNCHIRA VAYALIL,
KANNAMANGALAM SOUTH, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.R.PADMAKUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4205 of 2007

Dated this the 11th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He along with his wife faces indictment, inter alia, under Section 420 I.P.C. The petitioner was employed abroad. He was not available for trial. His wife, the 2nd accused faced trial. She has been found not guilty and acquitted by Annexure-A1 judgment. The case against the petitioner was split up. He apprehends arrest in execution of a non bailable warrant issued by the learned Magistrate to secure his presence.

2. According to the learned counsel for the petitioner, he is absolutely innocent. His absence earlier was not wilful, but was due to reasons beyond his control. The petitioner is willing to surrender and co-operate with the court for the expeditious disposal of the case against him. In fact, there is no worthwhile allegations surviving against the petitioner in the light of the deposition of the complainant as PW1 in the trial against the wife of the petitioner and in the light of the judgment in that case produced as Annexure-A1. The petitioner apprehends that he may be arrested before he surrenders and seeks bail from the learned Magistrate. He further apprehends that his application for regular bail may not be considered by the learned

Magistrate on merits, in accordance with law and expeditiously. In these circumstances he prays that appropriate directions may be issued.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the

learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

6. I find merit in the contention of the learned counsel for the petitioner that the learned Magistrate must consider the application for bail in the light of the deposition of the defacto complainant in the trial against the 2nd accused and in the light of the judgment produced as Annexure-A1. The petitioner can certainly request the learned Magistrate to do so. In the peculiar facts and circumstances of the case, I am satisfied that a further direction can be issued that the warrant of arrest issued against the petitioner shall not be executed till 23.07.07. He must appear and seek bail from the learned Magistrate before that date.

(R.BASANT, JUDGE)

rtr/-